

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|----------------------------------|---|----------------------------|
| VICTOR POPA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 1:18-cv-19 |
| |) | |
| BUREAU OF PRISONS, et al. |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on January 16, 2018 and was originally referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges. ECF No. 1. The complaint was filed the following day. ECF No. 3.

On September 24, 2018, the case was transferred to the United States Magistrate Judge Richard A. Lanzillo for all further pretrial proceedings. ECF No. 19. Thereafter, the Defendants filed a motion to dismiss or, in the alternative, for summary judgment. ECF No. 24. Plaintiff's response was due by November 19, 2018; however, no response was filed. ECF No. 26. On January 22, 2019, Plaintiff was ordered to show cause for his failure to oppose or otherwise respond to the Defendants' motion. ECF No. 29. Plaintiff was given until February 4, 2019 in which to respond to the Court's order, and he was specifically advised that his failure to do so would result in a recommendation that the action be dismissed for his failure to prosecute. *Id.*

In the meantime, the undersigned had been appointed as a United States District Judge. On March 21, 2019, this case was assigned to the Court's docket.

On April 4, 2019, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R"), ECF No. [32], recommending that the within civil action be dismissed for failure to prosecute and the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment be denied as moot. Plaintiff's objections to the R&R were due by April 22, 2019. *Id.* To date, no objections have been filed.

This Court is cognizant of the decision recently issued by the U.S. Court of Appeals for the Third Circuit in *Hildebrand v. Allegheny County*, No. 18-1760, --- F.3d ---, 2019 WL 1783540 (3d Cir. April 24, 2019). Therein, the court of appeals reiterated the "strong policy favoring decisions on the merits," *id.* at *3, and reversed the district court's Rule 41(b) dismissal based on the district court's abuse of discretion in applying the *Poulis* factors. *See Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984). In this Court's view, however, the facts of this case, as outlined in Judge Lanzillo's Report and Recommendation, are distinguishable from those that caused the court of appeals concern in *Hildebrand*, making this case suitable for dismissal, consistent with the Court's discretion under Rule 41(b).

For one, the Court notes that Plaintiff in this case is proceeding *pro se*, making him solely responsible for the failure to respond either to the Defendants' dispositive motion or to Judge Lanzillo's R&R. Secondly, unlike the plaintiff in *Hildebrand*, the Plaintiff in this case does not have a substantial history of responsible litigation relative to the claims in this matter. On the contrary, Plaintiff filed this case in January 2018 and, although he submitted the appropriate forms to accomplish service and obtain *in forma pauperis status*, he has not filed anything of record since May 2018, when he filed a change of address notice that coincided with his release from prison. ECF No. 11. As the Magistrate Judge noted, it appears that Plaintiff has abandoned his claim. Third, given the Plaintiff's lack of financial resources and apparent disinterest in

further litigating his claims (and noting that he now resides outside the Commonwealth), it does not appear that sanctions short of dismissal will be effective or appropriate. Finally, unlike in *Hildebrand*, it is not apparent from the face of the complaint that Plaintiff has pled a meritorious claim under the applicable pleading standards. Although this Court does not find that Plaintiff engaged in willful delay or bad-faith conduct, the other factors discussed weigh in favor of dismissal.

With these observations in mind, after *de novo* review of the Complaint and documents in the case, together with the Magistrate Judge's R&R, the following order is entered:

AND NOW, this 22nd day of May, 2019;

IT IS HEREBY ORDERED that the within action shall be, and hereby is, DISMISSED, with prejudice, for Plaintiff's failure to prosecute. IT IS FURTHER ORDERED that the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. [32]) is hereby DENIED as moot.

The Report and Recommendation of United States Magistrate Judge Richard Lanzillo, dated April 4, 2019, ECF No. [32], is hereby adopted as the opinion of this Court. There being no further claims or other matters pending in this case, the Clerk is directed to mark this case "CLOSED."

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

cc: VIKTOR POPA
2330 VOORHIES AVENUE, APT 6F
BROOKLYN, NY 11235

The Honorable Richard A. Lanzillo
United States Magistrate Judge